AGREEMENTS AND CONFERENCES IN THEIR RELATION TO OCEAN RATES

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In practically all recognized ocean trade routes served by more than one steamship line, we find agreements or conferences of some kind. These agreements have lately been subject to investigation, not only in this country, but abroad, prompted doubtless by the belief—more or less general—that combinations must of necessity be in restraint of trade. It is not the purpose of this article to defend agreements or conferences (although to the practical shipping man it is hard to see how our export trade could be properly served without them), but to consider them in their relation to, and their bearing upon, ocean rates.

In considering this question it is necessary first to be quite clear as to the meaning of the word "conference." In England and Germany this term refers to a group of lines working together in a highly organized manner, and which has imposed upon the shipping trade a tie, generally in the shape of a deferred rebate—usually a percentage of the net freight—payable at stated intervals to all "loyal" shippers. In effect this rebate acts as a deterrent to shippers who might support an occasional opportunity to ship cheaper, as the amount retained in hand by the conference lines is quite important, depending of course upon the extent of the shipper's cargo. In these countries it is recognized that conferences, which afford the shipper a thoroughly organized, regular and dependable service, are entitled to require from the shipper some assurance of support and protection from sporadic attack by outsiders, and the deferred rebate system has been upheld by the highest courts.

Lord Chancellor Halsbury in a decision by the House of Lords, December, 1891, says:

> I have been unable to discover anything done by the members of the Associated Body of Trades (the conference being sued), other than an offer of reduced freights to persons who would deal exclusively with them; and if this is unlawful, it seems to me that the greater part of commercial dealings where there is rivalry in trade must be equally unlawful.

The British Royal Commission also found that the advantages of conferences to the British export trade outweighed the danger of the conference exercising a monopoly, and sums up the situation as follows:

1. That a conference making use of the system of deferred rebates does possess, so far as the shipper of general merchandise is concerned, a limited monopoly.

2. That the monopoly is dependent upon the system of deferred rebates, or some tie equally effective.

3. That the limits to the monopoly lie, not so much in the actual existence of other adequate methods of transportation, as in the latent possibility of alternative methods coming into existence, if the monopoly be seriously and continuously abused.

4. That the limitations upon a monopoly in any particular trade vary according to the circumstances of that trade.

This limited monopoly, by which conferences are able to maintain rates to some extent irrespective of general market conditions, is, however, entirely dependent upon some tie on the shipper. So-called conferences serving the American trade are probably prohibited from taking advantage of such a tie (at least I know of no trade where the system is in force), and as this paper deals with American business, we have to consider totally different conditions as bearing upon freight rates.

There is of course no essential difference in the shipping business from other private business. The first object with which a man enters it is to make money, and his second is to make as much as he can. The primary idea of a conference in regular line business is undoubtedly to help the lines make money by saving it, as against the wasteful competition which exists when there is no conference or agreement. The line and the shipper, whilst mutually dependent upon each other, are still the two principals in a bargain; neither is altruist, though each expects the other to be.

The American conference is a combination, more or less close, of shipping interests formed for the purpose of regulating competition amongst themselves in the carrying trade upon a given route. The main object with which such a conference is formed is to replace unrestrained competition and demoralized freight rates with intelligent coöperation and freight rates so as to yield as large a return on the capital invested as the trade will stand. These rates are limited by the conference's self interest to develop and not restrain its trade. The object

is achieved by means of an agreement or understanding between the lines concerned under the terms of which the parties thereto will charge the same rates of freight. In other words, the lines do not arbitrarily fix the rate of freight, but agree that whatever may be good business for them to charge, high or low, each and all will maintain the same rate.

Let us see then, first, if such agreements enable the American over-sea conference lines to arrange rates arbitrarily, and, second, what is the effect of such agreements upon rates.

Deprived of the protection offered by the system of rebates or some other effective tie upon the shipper, the existence of conferences depends entirely upon affording the shipper a satisfactory service and reasonable rates. This is the position of the American conference. Theoretically, working under an agreement in a trade where there is no outside competition, conferences can arbitrarily fix rates. They do fix them, but they cannot, because of the international character of over-sea trade and the freedom of the ocean to everything that floats, maintain an unreasonable rate for any length of time. An unreasonable rate on any commodity can result only in that commodity being supplied by some other country, and the loss of its carriage to the conference lines. This would not be good business, nor would it be good policy. The exporter who would also be hurt in his business, would immediately set about encouraging an opposition line, which in the ocean trade is beset with none of the difficulties encountered under similar conditions on land. To understand this one cannot keep too prominently in view the essential differences between ocean and railroad transportation.

Railroads obtain their franchises from the state, which permits them to lay their tracks along the lines of existing or potential trade centers, and to acquire rights of way by the exercise of eminent domain. Without these special privileges a railroad cannot be built. A road which is built in the exercise of such franchises becomes in duty bound to maintain a regular and continuous service, as efficient as the needs of the trade along the line require and the rewards of the business will permit. It is but just that companies thus organized, enjoying property rights acquired often at the expense of the state, and operating by virtue of special privileges, should be held to the performance of the functions for which they were created, and should not so use their privileges as to cause prejudice to the public. They are public utilities and must expect public regulation.

The conditions under which transportation by sea is conducted are totally different. The ocean trade, except for restricted coastwise trade in some countries, is free to all comers. Ships are not fixtures in any trade, and are not constrained by any fixed line or route. They have no public aid, no franchises, and for the most part no advantages of local trade between the termini of their voyages. They owe no duty to the state to maintain a service, or to serve the public. Their enterprises are of a private nature. They may come and go by whatever route or in whatever direction they please. Their only incentive to engage in any particular trade is to develop that trade to such a point that it will yield a profit which will justify a regular and continuous service.

I have had considerable personal experience as a member of conferences, and in fighting against conferences, and as a result of this experience am prepared to state that conferences in this country:

1. Do not maintain unreasonable rates because,
   It is not in their power, and
   It would not be to their interest.
2. That they are open to successful attack by any ordinarily well equipped line which desires to enter the trade.
3. That while they may have a monopoly in that they have no actual competition, they are continually making concessions to shippers, as a matter of policy, which shippers could not secure in the open freight market.
4. That coercion of the conference by the shipper in the matter of rates is easier and more prevalent than dictation to the shipper by the conference. The shippers can get other steamers or lines, but the lines cannot get other shippers.

The whole history of the shipping business has proved the folly of conferences which tried to trade upon an apparent monopoly, and experience and self-interest have evolved the present-day conference idea, which is combination for the development of trade, and restraint only of wasteful competition amongst themselves. It must surely be evident that, in a business where the buyer has the opportunity of buying in the United States, England, Germany, Belgium or France, the carrying line from America must help the American seller or shipper to make his sale. If the sales are not made, there is no freight to carry. The proper answer to the question therefore is, that while theoretically a conference enables the lines to establish rates, such rates cannot be arbitrary, but must be reasonable. Self-interest

demands that they must enable the shipper or merchant to compete with the shipper or merchant of other manufacturing countries.

This brings us to the question, what is the effect of conference agreements upon rates of freight? Broadly speaking, they tend to their stability, their uniformity, and their maintenance on a parity with rates on similar goods from other countries. The advantage of this to the conference lines, is not so clear as the advantages to the shipper, because of the fact that while the conference lines from this country are generally compelled to follow market conditions, when the freight market is low, they are able to take advantage only to a limited extent of similar conditions when the market is high. It is, however, coming to be recognized as good business for the lines to maintain a moderate level of rates at all times, rather than follow the wide fluctuations of ocean rates between good and bad times, to make the same rate for big and small shipper alike, and to meet at all times, if possible, freight conditions existing in other countries. A market for a commodity lost through a peculiar freight condition abroad may be a market lost forever to the shipper, and tonnage lost forever to the carrying lines. Similarly it is not in the interests of the lines to help the large shipper to become larger, but to enable the small shipper to compete on equal freight terms with the big shipper. The big shipper may be able to charter a boat on his own account whenever it suits him, and two or three controlling a trade could dispense with the conference, but the more small shippers there are requiring regular service in varying articles of commerce, the more demand there is for liner transportation.

Again, the conference liner's interest is not only in the present; he is nursing his trade to develop it, and because of this must take a broad view at all times. He cannot have his cake and eat it too, and cannot eat it lest there be no more cake forthcoming. Without conference lines the export trade of this country, so far as freight rates are concerned, would be governed by the tramp rate, based on the law of supply and demand. As it is, rates in a trade under a conference régime fluctuate but slightly, except to meet conditions raised by the shipper or by conditions in other countries, which to conserve his trade, the liner is compelled to consider. In my opinion conferences or agreements tend to the maintenance of equitable and reasonable rates, adjusted from time to time to meet the needs of the general export trade to the country served by its lines.

The presence of the tramp steamer on the high seas is really the controlling factor in ocean transportation, and it may be of advantage to consider briefly the difference in the nature of the service rendered by the tramp and the line steamer. The "Tramp," to quote Sir Walter Runciman, M.P., (*British Industries under Free Trade*, 130) "goes everywhere, competes for everything against everybody, cuts into any trade—British, foreign or colonial—whenever he can see a profit, and he is similarly subject to attack with no means of defence except his own efficiency."

Practically all the bulk cargoes are carried in tramps—coals, grain, lumber, cotton, ores, sugar, petroleum, nitrates—all the goods which are transported in such quantities that a ship can be hired or "chartered" for the purpose. Chartering is done either for the voyage or for a period of time, and all the conditions of service, except price, have been determined for each trade by the shipowners and merchants and expressed in the contract of hire or "charter party." The price is subject to negotiation and is governed entirely by the law of supply and demand. The essential condition of a charter party is that the vessel shall be loaded with a full and complete cargo, failing which dead freight is payable by the merchant; and the obligation to provide the cargo in a given time falls entirely on the merchant or shipper, another of the principal conditions being that the vessel shall be loaded and discharged either within a specified number of days, or at the rate of so many tons per day. No tramp steam shipowner would undertake to send his steamer to sea on a given day whether the cargo be ready by the specified day or not, and if she is delayed he receives compensation in the shape of demurrage.

As for the liner, "her route is cut and dried;" she sails between fixed ports on regular sailing dates, cargo or no cargo, and all arrangements are made and advertised for weeks or months before hand. Liners vary from the Atlantic passenger boat, through "intermediate" boats of slower speed carrying both cargo and passengers, to pure cargo boats. There is no exact line of demarcation between the liner and the tramp for new trades are always growing up to that degree of magnitude which demands a regular service. The difference in the nature of the service supplied is admirably stated in the *Report of the Royal Commission on Shipping Rings* presented to the British Parliament in 1909, as follows:

The "tramp" loads and usually discharges at one port and preferably a port where the dues are small. It does not sail at a fixed date but waits until it has a full cargo. Moreover, the tramp does not confine itself to a particular trade. It comes into a trade when the freight prospects are good and leaves it when they are bad. It acknowledges no obligation except to go wherever it can obtain the highest freight.

The "liner," on the other hand, generally sails according to a fixed time table almost with the regularity of a railway train, and she sails whether full or not full. She usually loads and discharges at several ports (to serve her trade) and consequently has large expenses in port dues and charges, and, most important of all, she stays in the trade whether the times are good or bad. Moreover, whereas in the case of the tramp the charter party usually requires the merchant to discharge at the rate of so many tons per day with heavy penalties for demurrage, the discharging in the case of the liners is effected by the liners themselves, at their own risk.

The tramp is a comparatively inexpensive steamer built to carry bulk cargoes as cheaply as possible, consistent with efficiency, and is generally of low speed. The cargo liner is usually of higher speed, with extra between decks for the safer carriage of general merchandise and better gear and all-around equipment for its safer handling. She is of higher initial cost and costs considerably more to operate and maintain.

There being so little real similarity in the service rendered by the tramp and the liner, it is very hard to determine the result of their competition in freight rates. The tramp rate governs the liner's rate on bulk commodities, such as case oil, lumber, etc., but hardly affects the general cargo rates. As a matter of fact, in the American export trade, the basis of which in most long-voyage trades is case oil, the liners generally carry this cargo at lower rates than the tramp, and it is only when tramp rates are high that a fair rate is obtainable by the liner on this and similar bulk commodities. The reason is plain: the shipper knows that the liner requires to have this freight as a basis for its cargo and can trade accordingly. The liner may not like it, but must have the bulk cargo and has to take it at the rate the shipper will pay. Both shipper and liner know what the tramp will carry it for, and the result usually is that the liner is forced to cut the tramp rate somewhat. I have said that the tramp hardly affects the general cargo rate, but by this I mean the tramp as a tramp. The tramp, however, when business is bad and rates low can be chartered by the loading broker or by a shipping contractor or speculator and laid on the berth, thus becoming for the time being a general carrier. This ever-

present danger of competition has a great effect on general cargo rates and forces the regular line interests to follow to a very considerable extent the open market value of the tramp steamer. Even in Europe with the deferred rebate system the English and German lines are subject to outside competition by chartered tramps from Antwerp and other ports, and as an example of the effect of this have within the last month reduced their rates on cement and other bulk commodities to the Argentine by from 25 per cent to 50 per cent. Although the conference lines from New York have no such competition at the moment from the United States, they have voluntarily made similar reductions in order, if possible, to keep for this country our share of that market in these commodities. Without a conference the American shipper would have to pay the competitive tramp rate and to a tramp which had no concern as to what was happening in Europe. The New York conference rate on cement to Buenos Ayres at present (June, 1914) is $2.40 per 2240 pounds. The tramp rate on coals, a commodity more cheaply handled and handled in much less time is $3.75, and I should say that the equivalent rate on cement would be at least $4. The market value of the tramp has therefore a very decided effect upon the liner's rates; in fact the tramp is the direct controlling influence on bulk commodity rates and its potential use is a deterrent against the maintenance of high rates on general cargo.

One is often asked what is a reasonable rate on general cargo? and the question is very difficult to answer. Broadly speaking a reasonable rate is the rate the traffic will bear, having in mind that this phrase has limitations in ocean transportation not operative in our railroad business. A combination of railroads between any two interior points which cannot be reached by river or canal, and too far apart for other than railroad transportation, can if unrestrained by law exact practically whatever rate they chose to ask. The consumer must have the commodity whatever it costs, and the consumer pays the freight. But the consumer, let us say in the Argentine, has the choice of buying these commodities in probably half a dozen countries open to him through the avenues of ocean transportation. He gets prices from the United States, Great Britain, Germany, Belgium or France, and buys in the cheapest market, with due regard to quality. It follows therefore that the conference line rate from any country must be reasonably close to that of any other country if the line is to have the freight to keep it running, and as a further corollary the rate the

traffic will bear must *per se* be a reasonable rate. There are commodities which cannot be supplied by some countries, even if they were transported free, and the rate this traffic could bear would be unreasonably low. These may be manufactured at great economic disadvantages behind a tariff wall, but are hopelessly out of the race in competition with the cheapest market. In the complaints steamship lines receive from manufacturers there are many such cases, but it is really unreasonable to expect a carrier to assume any part of the disability of the manufacturer in international trade. In cases where the freight is desirable it is done to some extent, but the principle is unsound. International ocean trade, being entirely competitive and inherently uncontrollable, adjusts itself, if left alone; and international trade in the exchange of commodities is entirely a question of the price of manufacture and efficiency in selling, not of ocean transportation. Different natural resources and differing national aptitudes in industry have resulted in well defined divisions of labor. American harvester machinery, German toys, Swiss watches and British ships are fair examples. The Maine lumberman may feel that his freight rate to South America is unreasonable because he is losing his market to the lumberman in British Columbia, yet he may be paying $10 per 1000 feet as against the other's $15. To enable him to compete with his more expensive lumber he might require a $4 freight rate, which would be unreasonable. English steel and iron industries established at tidewater give the Englishman an advantage in exporting rails, etc., and is a set-off against the higher efficiency of American mills which may have to bear an inland haul to the ocean. The development of cheap water power may change the world's source of supply in certain articles and completely kill the export from their former sources. It is safe to say that the ocean carrier will at first be asked to reduce its freight rate on the articles so affected, but the freight rate has no bearing whatever on the situation thus created.

Because of the nature of the transporting vehicle, a reasonable rate on say steel rails would not be a reasonable rate on cotton piece goods. The steamer has a weight carrying capacity and a measurement carrying capacity. Filled to her weight capacity with steel rails she would carry say 7,000 tons. The same steamer filled with cotton piece goods could carry 8,400 freight tons, and if loaded with the proper proportion of rails and piece goods would lift 10,700 payable tons. As the bulk of our export trade consists of light cargo fairly comparable

to cotton piece goods, it is very advantageous for the steamer to get weight cargo, and we accordingly find the rate per ton on such commodities much lower than the rate per ton on light cargo, which is usually carried on a measurement basis, *i.e.*, per ton of forty cubic feet. Shippers of flour may feel that the rate they are asked to pay for flour to Europe is unreasonable in comparison with the rate on wheat, overlooking the fact that the liner may require a large quantity of wheat as ballast; that the rate it can get on this is governed by its need and the price at which wheat can be landed from the Argentine, India or Russia, and that American flour being in demand in Europe can easily stand the higher rate.

Neither can we judge "reasonableness" by the distance the goods are carried, because of different conditions at the point of destination. The steamer's expenses there have some bearing, but the vital consideration is what the steamer gets to carry back again. In some trades the outward cargo must bear the cost of the homeward voyage or a long shift in ballast. In others the homeward berth may be the better of the two, in which case you will find the outward rates relatively low.

To arrive at what is a reasonable rate, we must apply different reasons in each particular trade, and on each particular commodity, but in general terms, keeping in mind the peculiar conditions governing ocean transportation, I am convinced that a reasonable rate on any commodity is the rate which permits of the export of that commodity. Bear in mind we are discussing general cargo rates in trades where the transporation is furnished by a conference or by lines working under an agreement, in which the shipper is under no necessity to speculate on his freight rate. During the last boom in ocean freights, shippers who had sold bulk cargoes ahead and were caught by the rise had to pay very high rates to the tramp to protect their contracts. These high rates may have appeared unreasonably high to the shipper, in that they yielded a huge profit on the voyage to the tramp, but they were simply a result of the supply of ocean transportation falling short of the demand for it. The pitch pine lumber shippers for instance, paid 197/6 per standard to the River Plate against 120/–in 1911 or 102/6 to 105/–, the present rate. But the general cargo shipper working with conference lines need take no such risk. He gets his freight rate, adds the price of the commodity and his profit, and makes the price accordingly to his buyer. If his bid is accepted in

competition with prices received by the buyer from other countries, it is evident the freight rate must be reasonable; and we have seen that if there is anything the matter with the freight rate, so that he cannot make his sale, it is to the conference liner's interest to put it right. An unreasonable freight rate might conceivably be exacted on a patented commodity not obtainable elsewhere, but even in this case the high rate would be no hardship on the shipper. The consumer wants the article and pays the freight in the price he is willing to pay for it. Should the lines ask a freight rate establishing an export price so high that the buyer chooses to forego the purchase of the article in question, they would soon reverse themselves. They are forced to carry such a big proportion of their cargoes at relatively low rates that the higher class cargo is very desirable and if one cannot get $12 a ton on, let us say, typewriters, it is much better to take $9 rather than fill the space with kerosene oil at $4.

Without an absolute monopoly all business is a question of negotiation and compromise. It may appear at first thought that a conference acting more or less as a unit has a greater power in bargaining than the unorganized body of general cargo shippers, but in the American trade, at least, this is not true. All my experience has proved—often to my discomfiture—that the advantage lies with the shippers, and the great development of our export trade in the last ten years would seem to indicate that they must have been able to secure for themselves reasonable freight rates.